

Appeal from decision of Craig District Office, Colorado, Bureau of Land Management, rejecting application to amend natural gas pipeline right-of-way. C-34264.

Reversed.

1. Rights-of-Way: Act of February 25, 1920 -- Rights-of-Way: Applications -- Rights-of-Way: Oil and Gas Pipelines

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

APPEARANCES: Gregory W. Jones, Esq., General Counsel, P & O Falco, Inc., for appellant; Marla E. Mansfield, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

P & O Falco, Inc., has appealed from a decision of the Craig District Office, Colorado, Bureau of Land Management (BLM), dated April 4, 1983, rejecting its application to amend its natural gas pipeline right-of-way C-34264.

On April 9, 1982, BLM issued a 30-year right-of-way to appellant for 4.25 acres of land situated in Rio Blanco County, Colorado, pursuant to section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976). The right-of-way encompassed a liquified petroleum gas (LPG) truck unloading station, a 50-foot wide natural gas pipeline right-of-way and an access road. By letter to appellant, dated January 31, 1983, the Area Manager, White River Resource Area, BLM, noted that there was an "unauthorized residential trailer" on appellant's right-of-way and required appellant to justify "the continued residential occupancy of the subject lands" "within 30 days of receipt of

this letter." By letter dated February 25, 1983, appellant sought to amend its right-of-way "to include installation of a residential trailer," in accordance with 43 CFR 2883.2(d). Appellant provided the following justification for installation of the trailer:

1. The automatic injection pump is designed to run 24 hours a day, if needed. An audible alarm is installed on the pump to indicate various problems with the pump. The presence of an operator 24 hours a day will greatly improve the safety aspects of responding to these alarms or any other problems should they occur at night.

2. The presence of the residential trailer is also a visible deterrent to vandalism and more importantly theft of product from our storage tanks. Theft and fraud is an ever increasing problem in our business and we feel this is the best method to protect our facility.

3. Although economic factors cannot be considered in your decision, I would be less than honest with you if I said it was not a concern of ours. The daylight trucking operation of our facility requires some one on site approximately 12 hours per day. The operator may not be busy the whole time but he must be there for scheduling, maintenance and running the lab. This 12 hour operation is too much for one shift but not enough for two shifts especially considering the travel time to suitable housing in Vernal, Utah or Rangely. The availability of a residential trailer on site makes the one shift option a viable one. During slack times he can take long rest breaks plus have a convenient place for meals and to take care of personal needs on the job. All of this will facilitate better morale of our employee and a more economic operation of our facility.

In its April 1983 decision, BLM rejected appellant's application to amend its right-of-way, holding that:

The White River Resource Area Management Framework Plan (WRRM-MFP) and current management practice do not provide for residential occupancy of rights-of-ways. The justification submitted by P&O Falco does not provide ample reason to amend the WRRM-MFP to allow residential occupancy of the present LPG station. In our judgement the residential and domestic needs of the employees may be served in the nearby communities of either Dinosaur (approximately seven (7) miles away) or Rangely (approximately 14 miles away), Colorado.

In its statement of reasons for appeal, appellant reiterates its contention that installation of a residential trailer is not merely to accommodate the residential needs of its employees but is justified in the interest of safety and site security by virtue of the fact that it permits an employee to be "present twenty-four hours per day." Appellant explains operations on its right-of-way site as follows:

The LPG truck loading station * * * is a facility used for injecting liquified petroleum gases (LPG's) into an LPG pipeline owned and operated by MAPCO, Inc. Tank trucks from refineries located throughout the area bring the LPG's to the station for injection into the pipeline. A Falco employee is required to be present for the unloading in order to measure the amount of LPG being injected as well as to operate the unloading facilities. The trucks arrive approximately fifteen hours per day and the injection facility is subject to operation twenty-four hours per day.

Falco maintains two 30,000 gallon storage tanks on site into which the trucks unload. When the tanks are sufficiently full, the injection process begins. There is always a certain amount of the LPG's in the tanks even after injection and LPG's are highly flammable and quite dangerous if not handled prudently.

Appellant notes that various provisions in its right-of-way grant require it to promote the safety of its operations and that the "best way to maximize safety at the site is to have a Falco employee present twenty-four hours per day," who can "respond immediately to any safety-threatening situations." Appellant points out that it "must maintain an employee present in any event due to the nature of the around-the-clock operations."

In its answer, the Solicitor, on behalf of BLM, contends that residential use of the right-of-way is not considered a "desired use" under the applicable planning documents. The Solicitor further argues that the domestic concerns of a resident employee would be distracting and thus, would not fully promote the interest of safety and site security. In addition, the Solicitor contends that a suitable alternative is a chain link fence around the site, rotating shifts and a secured gate. The Solicitor also notes that the dog owned by the current resident has harassed the livestock of neighboring grazing permittees.

[1] Section 28 of the Mineral Leasing Act, as amended, supra, provides for the issuance of rights-of-way for natural gas pipelines and "related facilities," including campsites. 30 U.S.C. § 185(d) (1976). 1/ Departmental regulations define related facilities as "those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline." 43 CFR 2880.0-5(1). Moreover, the holder of a pipeline right-of-way is required to protect the safety and health of its workers and the general public and to control or prevent damage to public or private property. 30 U.S.C. § 185(g), (h)(2) (1976); 43 CFR 2881.2(b)(3), (c). These requirements were incorporated into appellant's right-of-way grant.

1/ The Act specifically provides that related facilities "include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way." 30 U.S.C. § 185(d) (1976).

Under section 28 of the Mineral Leasing Act, as amended, supra, approval of a pipeline right-of-way by the Secretary is a discretionary matter. Fuel Resources Development Co., 59 IBLA 378 (1981). A BLM decision rejecting an application for a right-of-way, or amendment thereto, will ordinarily be affirmed by the Board where the record shows the decision to be based on a reasoned analysis of the factors involved, made with due regard for the public interest. *Id.* We believe, upon a careful review of the record, that BLM's decision to reject appellant's application to amend its pipeline right-of-way does not meet this standard.

In George M. Wilkinson, 70 IBLA 1 (1983), we reviewed BLM decisions which in part excluded proposed dwelling structures for the use of the owner and his employees from various geothermal resources lease applications filed pursuant to the Geothermal Steam Act of 1970, 30 U.S.C. § 1001 (1976). We made the following observations in affirming BLM's decisions:

The reference in 30 CFR 270.34(d) to "camp sites" is the nearest the regulations come to covering the subject of dwelling facilities on geothermal lease sites. Campsites are provisional quarters which may be necessary to temporarily house crews and staff associated with lease operations. We find no basis in the Act or regulations allowing the erection of permanent homes as adjuncts to lease operations. * * * The intent of the Act is to make possible the production, utilization, and processing of geothermal resources, not the granting of permanent homesites.

George M. Wilkinson, supra at 3. As noted, supra, section 28 of the Mineral Leasing Act, as amended, supra, similarly authorizes "campsites." We conclude that the residential trailer in this case comes within the definition of a campsite in the sense that it is used to temporarily house one of appellant's employees. It cannot be considered a permanent home.

Accordingly, we conclude that BLM was authorized by section 28 of the Mineral Leasing Act, As amended, supra, to allow installation of a residential trailer within a pipeline right-of-way, if the right-of-way holder could demonstrate that it was "necessary for the operation or maintenance of [the] * * * pipeline." 43 CFR 2880.0-5(1). We believe that appellant has done this.

Appellant argued in favor of the trailer on the basis of providing safety and site security by the presence of a single resident employee. BLM's objection to the trailer is essentially not directed at the trailer itself, but rather, as it stated in its January 1983 letter and its April 1983 decision, is directed at "residential occupancy" of the trailer. The Solicitor, on behalf of BLM, indeed accepts the alternative of rotating shifts, which in these circumstances reasonably entails use of a trailer, if only for the comfort and convenience of these several employees.

In its April 1983 decision, BLM noted that the relevant MFP and current management practice "do not provide for residential occupancy of rights-of-way." However, there is no evidence that residential occupancy, particularly where it is in the interest of operation and maintenance of a pipeline, is precluded thereby.

Appellant contends that the presence of a resident employee promotes the safety of its operations. We agree. The presence of a resident employee means that someone is on duty at all times in order to respond to emergencies. The Solicitor argues, however, that the domestic needs of such an employee, especially the need for sleep, would detract from the employee's responsiveness. The Solicitor has apparently overlooked the fact that the injection pump is connected to an alarm system, which would alert the employee to any problem. In the alternative, the Solicitor argues that the need to promote safety could be equally satisfied by rotating shifts. While this may be true, we do not see that three shifts would eliminate the need for the trailer, and recognize the economic desirability of a one shift operation. BLM should endeavor to accommodate the chosen option of a right-of-way holder where it adequately promotes the common interest of safety and does not conflict with other BLM management objectives. Fuel Resources Development Co., supra at 382.

Appellant also contends that the presence of a resident employee promotes site security. We agree. The Solicitor again argues that the domestic needs of such an employee interfere with his duties. We disagree because knowledge that the site is not unattended is a valuable deterrent to theft and vandalism. While we agree with the Solicitor that the addition of a fence and a secured gate would also be important, we do not view them as an alternative to an onsite presence. Moreover, we cannot overlook appellant's efforts to save money by using one shift, rather than several. 2/

Therefore, we conclude that, based on the reasons proffered, BLM improperly rejected appellant's application to amend its pipeline right-of-way to include installation of a residential trailer. William A. Sigman, 66 IBLA 53 (1982).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ We note the fact that the current resident is keeping a dog. While it may increase his responsiveness to any threats to site security, complaints to BLM indicate that the animal is not restrained. To the extent that the dog has harassed livestock in the area (see letter to Area Manager, BLM, from John Papoulas, received Mar. 11, 1983), and these complaints continue, BLM may require appellant to have the animal removed from the site. Alternatively, it is possible that enclosing its facility with a chain link fence will be sufficient to contain the animal. We note that such a fence had originally been proposed by appellant. See letter to Area Manager, BLM, from appellant, dated Nov. 17, 1981.

